

Appeal from a decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease application M-64673.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

BLM may properly reject a simultaneous oil and gas lease application filed on behalf of a partnership if the applicant has not complied with the provisions of 43 CFR 3112.2-3 by disclosing the identity of all partners on the application or on a sheet accompanying the application, a substantive requirement of the oil and gas leasing program.

APPEARANCES: C. M. Peterson, Esq., Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE KELLY

R. G. B. Company appeals from a decision dated April 4, 1985, by the Wyoming State Office, Bureau of Land Management (BLM), rejecting simultaneous oil and gas lease application M-64673. Appellant's application for Montana Parcel 559 received priority in the February 1985 simultaneous oil and gas filings.

Part B of appellant's application form (form 3112-6(a) (April 1984)) was signed "RGB Company By: R. G. Boekel, General Partner." The space provided on the form for "FULL NAME OF OTHER PARTIES IN INTEREST (IF APPLICABLE)" had been left blank.

BLM rejected the application because it did not include the names of the other partners on the application, and no separate list of partners was provided.

On appeal, appellant asserts that it filed with its application a separate list with the names of the other partners, but that BLM indicated

having received no such list. <sup>1/</sup> Appellant asserts that the failure to submit the list at the time the application is filed is a non-substantive error which it corrected by a later filing. Appellant contends that under the filing system as presently constituted, BLM clearly retains the discretion to "accept or reject" where no list of partners' names is provided. Appellant also asserts that the regulatory requirement is "arbitrary, capricious, an abuse of discretion and contrary to the law" because it does not apply to corporations.

[1] The regulatory requirement upon which BLM's decision is based reads in part:

Compliance with Subpart 3102 of this title is required. The applicant shall set forth on the lease application, or on a separate accompanying sheet, the names of all other parties who hold an interest (as defined in § 3000.0-5(k) of this title) in the application, or the lease, if issued.

43 CFR 3112.2-3.

On August 19, 1983, BLM announced that the newly promulgated version of 43 CFR 3112.2-3, 48 FR 33648 (July 22, 1983), would be strictly enforced:

After August 22, 1983, applications for simultaneously offered parcels received from associations, including partnerships, must be accompanied by a complete list of individuals who are members thereof. This requirement is authorized under 43 CFR 3102.5. By this notice, the Bureau of Land Management formally interprets and exercises its right of demand for this information at the time application is made.

48 FR 37656 (Aug. 19, 1983).

BLM stated that the purpose of strict enforcement of the regulation at 43 CFR 3112.2-3 is "to preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." Id. Disclosure of parties-in-interest also allows BLM to review applications against the acreage limitations set forth in 43 CFR 3101.2. Satellite 8211104, 89 IBLA 388, 395 (1985). Appellant is deemed to have knowledge of 43 CFR 3112.2-3 and the requirement that partnership applications must be accompanied by a complete list of members. Both were published in the Federal Register, and were, therefore, a matter of public record. 44 U.S.C. §1507 (1982); see Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 385 (1947); W.O.I.L. Associates, 85 IBLA 394 (1985).

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<sup>1/</sup> The only list of appellant's partners appearing in the casefile is one received by BLM on Apr. 11, 1985. Departmental officials are presumed not to have lost or misplaced legally significant documents. See H. S. Rademacher, 58 IBLA 152, 88 I.D. 873 (1981).

Appellant's argument that the failure to comply with 43 CFR 3112.2-3 is a non-substantive error has previously been addressed and rejected by the Board. In BTA Oil Producers, 91 IBLA 268, 271 (1986), we stated in part:

[Appellant's] assertion that the failure to disclose the members of the partnership is inconsequential must be rejected. The requirement that all partners be identified on the application is substantive and is reasonably related to a legitimate agency activity. Although the identities of the members of a partnership receiving priority could be determined upon inquiry after a drawing, this is not a substitute for disclosure prior to the drawing. In light of the large number of partnerships and associations that participate in the simultaneous drawings, advance disclosure of the identity of the partners or members is required to guard against illegal multiple filings on the same parcel by an individual who is participating in and thus holding an interest in more than one partnership or association. The identity of the parties who hold an interest in all associations and partnerships participating in the drawing must be known, not just the identity of those who hold an interest in the successful drawee. See The Turner Association, 85 IBLA 374, 377 (1985).

See also, Kerogen Crushers, 95 IBLA 63 (1986).

We also must reject appellant's argument that rejection is discretionary. <sup>2/</sup> In BTA Oil Producers, supra at 272, we concluded that rejection of an oil and gas lease application was required where a partnership failed to disclose its members:

Departmental regulation, 43 CFR 3112.5-1(a), requires that "[a]ny application determined by adjudication as not meeting the requirements of Subpart 3112 of this title shall be rejected." The Board has held that a failure to disclose the members of an association in compliance with the regulations requires rejection of a simultaneous oil and gas lease application. E.g., W.O.I.L. Associates, supra; The Turner Association, supra. The policy and enforcement notice published at 43 FR 37656 defined partnerships to be among those entities which must identify their members. The policy of rejecting applications when the parties-in-interest are not disclosed is properly applied to partnerships.

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<sup>2/</sup> Appellant bases his argument on the following sentence which appeared in BLM's Aug. 19, 1983, announcement, cited previously: "Failure by associations or partnerships to comply with this requirement shall result, at the discretion of the authorized officer, in unacceptability or rejection of the application." This sentence only refers to BLM's discretion to determine whether the application is deemed unacceptable or rejected for the purpose of disposition of the application form and filing fees. See 43 CFR 3112.3; but see generally Shaw Resources, Inc., 79 IBLA 153, 91 I.D. 122 (1984).

Thus, BLM properly rejected [appellant's] application for failure to disclose the identity of its partners prior to the closing date for filing simultaneous applications. On [the closing date, appellant's] application was incomplete and [appellant] was not a qualified applicant.

See also Kerogen Crushers, supra.

Finally, appellant asserts that the regulation is arbitrary, capricious, an abuse of discretion, and contrary to the law. We have repeatedly held that this Board has no authority to declare duly promulgated regulations invalid. Such regulations have the force and effect of law and are binding on the Department. See Robert R. Perry, 87 IBLA 380, 388 (1985) and cases cited therein.

We therefore conclude that BLM properly rejected appellant's simultaneous oil and gas lease application.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

John H. Kelly  
Administrative Judge

We concur:

Gail M. Frazier  
Administrative Judge

Will A. Irwin  
Administrative Judge

